

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN POLLY,

Plaintiff,

vs

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No: 11-13404
Honorable Victoria A. Roberts
Magistrate Judge Michael
Hluchaniuk

ORDER ADOPTING REPORT AND RECOMMENDATION

I. INTRODUCTION

This matter is before the Court on a Report and Recommendation (“R&R”) (Doc. #5) by Magistrate Judge Hluchaniuk. Magistrate Judge Hluchaniuk recommends that the Court **DISMISS WITHOUT PREJUDICE** Plaintiff’s complaint for failure to pay the required filing fee.

The Court reviewed the record and considered Plaintiff’s objections. The Court finds the R&R well reasoned and **ADOPTS** Magistrate Judge Hluchaniuk’s recommendations.

II. BACKGROUND

Judge Hluchaniuk adequately summarizes the relevant facts and procedural history. R&R at 1-2. His summary is incorporated here.

III. ANALYSIS

Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, the Administrative Office of the United States Court created, and this Court

adopted, the Case Management/Electronic Case Files system (“CF/ECF” or “ECF”). Electronic filing through this system is governed in part by local rule 5.1.1, which incorporates the ECF Policies and Procedures Rules for the Eastern District of Michigan. E.D.Mich. LR 5.1.1. Each filing user must complete an ECF registration form. ECF Policies and Procedures Rule 3(b) *available at* http://www.mied.uscourts.gov/CMECF/Policies/policies_procedures.pdf. Furthermore, all users are responsible for “maintaining valid contact information in his or her ECF Registration account profile” so that he may receive correspondence and legal documents through the ECF system. *Id.* Rule 3(c), E.D.Mich LR 5.1.1.

Through ECF, notice was issued informing Plaintiff that he must pay the correct filing fee, or submit an application to proceed *in forma pauperis*. (Doc. # 2, Notice of Filing Fee Not Paid). An Order to Show Cause was issued fifteen days later using the ECF system telling Plaintiff to submit payment to avoid dismissal. (Doc. #4). Finally, an R&R was entered into ECF, recommending that Plaintiff’s complaint be dismissed without prejudice. (Doc. #5). In his objection to the R&R, Plaintiff alleges that he did not receive any of the documents submitted through the ECF system, except the R&R, which he received electronically. (Doc. # 6, p 2).

The Court doubts that Plaintiff did not receive any communications regarding the requirement to pay the filing fee issued through the ECF system except the R&R. All documents were sent through the same system and to the same email address submitted by counsel. Furthermore, Plaintiff’s own objection states that he was checking email, “waiting for the notice and was attempting to find out what happened.” Thus, Plaintiff knew that communications would come through the ECF system.

Alternatively, had Plaintiff used the Public Access to Court Electronic Records (PACER) system, all notices were available for review at any time.

IV. CONCLUSION

For these reasons, the Court **ADOPTS** Magistrate Judge Hluchaniuk's R&R.

The case is **DISMISSED WITHOUT PREJUDICE.**

IT IS ORDERED

/s/ Victoria A. Roberts

Victoria A. Roberts
United States District Judge

Dated: 1/30/12

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on all counsel of record January 30, 2012.

S/Linda Vertriest
Deputy Clerk